

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 63

HAWAII PUBLIC BROADCASTING AUTHORITY

SERVICES AND CHARGES

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Historical Note: Chapter 63 of Title 16, Administrative Rules, is based substantially upon Chapter 3, Title IX, entitled "Services and Charges Policies." [Eff 1/3/75; am and eff 7/11/75; R 7/2/81]

§16-63-1 Purpose. The purpose of this chapter is to establish the means, conditions, procedures, and charges under which Hawaii public broadcasting authority's services may be used. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-2 Definitions. As used in this chapter:

"Authority" means the Hawaii public broadcasting authority or its duly designated representatives as provided for in section 314-1, Hawaii Revised Statutes.

"Board" means the board of public broadcasting.

"Broadcasting" means the dissemination of electromagnetic communications through the atmosphere directly to receivers or by the intermediary of relay stations and cable systems.

"Closed circuit" means the distribution of programs or shows directly to designated reception points by means of cables, wires, microwave, or similar nonbroadcast systems.

"Customer" means any purchaser of the authority's production or transmission services. Customers are classified as being "commercial" (for profit), "nonprofit," or "Hawaii State government."

"Distribution" means the dissemination and delivery of program or program-related materials directly to persons.

"Element or elements" means anything used in broadcasting or production activities including but not limited to film, video and audio tapes, props, set pieces, costumes, furniture, and mail, cables, telegrams, or telephone calls handled by the authority in connection with services rendered to a customer.

"Executive director" means the individual appointed by the board as provided for in section 314-10, HRS.

"Persons" means not only individuals, but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally, where it appears from the

subject matter, the sense and connection in which such words are used, that such construction is intended.

"Production" means the researching, preparation, performance, and when applicable, recording, and editing of audio and visual materials into a finished presentation.

"Program" means the end result of a production, either presented live or recorded in some form for future use.

"Rate schedule" means a listing of all charges for services rendered by the authority relating to production, transmission, distribution, rental and use of equipment, facilities and personnel.

"Rental" means customer use of authority equipment, facilities, or programs for a charge.

"Services" means production, transmission and distribution of programs or rental of equipment, facilities, and personnel.

"Set-up time" means the time required to set up or prepare facilities and equipment to provide services.

"Strike time" means the time required to restore facilities and equipment to normal storage conditions after services have been provided.

"Talent" means any participant or performer utilized in a production.

"Television" means an electronic system of converting and transmitting light and sound waves into electrical waves and the reconversion of electrical waves into light and sound waves.

"Transmission" means either broadcast or closed circuit distribution of programs. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-3 Objective. The objective of the Hawaii public broadcasting authority is to produce, acquire, broadcast, and distribute television programs and related print and audio-visual materials which enlighten and enrich the lives of the people of Hawaii. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-1)

§16-63-4 Programming. The board shall have final control of program policy. Such policy shall be in accordance with State and federal law and the regulations of the Federal Communications Commission. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-9)

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§16-63-5 Who may receive services. (a) The following may be customers of the authority (in order of priority):

- (1) Hawaii State government agencies;
 - (a) Department of education;
 - (b) University of Hawaii system; and
 - (c) Other;
 - (2) Public broadcasting entities;
 - (3) Nonprofit groups or corporations when the services are to support program production for public television use;
 - (4) Agencies of governments other than the State of Hawaii;
 - (5) Nonprofit groups or corporations when the authority deems it in the public interest; and
 - (6) Persons, when the authority deems that there are no comparable services available.
- (b) The rate schedule for nonprofit customers shall apply to priorities (2) through (5). The rate schedule for commercial customers shall apply to priority (6).
- (c) Services shall be provided at the authority's discretion and in accordance with the authority's available resources and prior commitments. Transmission services shall be in compliance with Federal Communications Commission regulations. [Eff 7/2/81; am 11/5/83; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-6 Services application. Requests for services shall be submitted in an application form provided by the authority and shall be subject to the terms and conditions set by the authority. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-7 Application form. The application form shall, among other things, include the following:

- (1) Application date;
- (2) Name of applicant;
- (3) Address to which bills are to be mailed or delivered;
- (4) Service project name and purpose;
- (5) A brief outline of the content and format of the proposed project;
- (6) Description of specific services requested;
- (7) Source of funding; and
- (8) Producing agency. [Eff 7/2/81; comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-8 Application review. In determining whether to approve requests for services, the authority shall consider among other things, the ability of the authority to provide or perform the requested services, and conformance with all copyright or other applicable laws. No request shall be approved which is in conflict with section 16-63-5. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-9 Denial. Authority denial of an application for services is subject to appeal to the board. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-10 Cancellation. Customers cancelling services at least forty-eight hours before the scheduled beginning of usage will not be charged for the services requested, except that the customer shall pay any expenses incurred by the authority prior to cancellation in preparation for the scheduled services. Cancellations within forty-eight hours of the scheduled beginning of usage will result in charges for services as if used, provided that the executive director may waive charges when cancellation results from weather, or other circumstances beyond the customer's reasonable anticipation. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-11 Program negotiation. The authority may negotiate with persons for program services. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-12 Program usage. The authority may approve use of authority produced or owned programs for commercial purposes. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-13 Videotape storage. (a) The authority may store videotapes for customer for a period of thirty days after transmission. Unless there is written agreement to the contrary between authority and customer, the authority shall assess the customer a storage charge as specified in the rate schedule of charges for all tapes stored beginning the thirty-first day after the date of transmission.

(b) The customer shall remove, at customer's expense, all videotapes in storage, within fifteen days after receiving a written notice from the authority.

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In the event that customer fails to remove the videotapes, ten days after receiving a second written notice, the authority shall have the right to dispose of such videotapes without liability to the authority. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-14 Liability limits. (a) The authority shall not be held liable to the customer or third parties for any loss, damage, or expense resulting from any equipment failure, error, neglect, or omission beyond the control of the authority.

(b) The authority's liability for elements which are damaged, lost, or destroyed as a result of negligence by the authority, shall be limited to the replacement value of the raw elements. In the case of film or videotape productions, raw elements shall be considered as equivalent lengths of unexposed film or unrecorded videotape.

(c) The authority shall not be liable for interruption of transmission due to any cause.

(d) The authority shall not be liable for any damages resulting from a change in transmission schedule due to any cause.

(e) The authority may, in the public interest, preempt or postpone any portion of its program transmission. The authority, when possible, shall notify in advance the customer whose program is to be preempted or postponed. If advance notification is not possible or feasible within a reasonable time after a program change, the authority shall inform the person of said change. Suitable substitute time shall be arranged by the authority for the customer. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-15 Warranty. In the event of any breakdown or other failure of equipment furnished by the authority to the customer:

- (1) Where the breakdown or failure is due to causes within the authority's reasonable control and not the customer's own negligent operations; and
- (2) Which results in the unsatisfactory performance of work contracted for by a customer, then the same or equal authority services, to the extent reasonably possible, shall be made available by the authority to the customer without additional charge. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-16 Rental services. (a) Authority equipment and facilities may be rented to customers subject to section 16-63-5.

(b) The authority may require that rented equipment be under the control and supervision of authority personnel at all times. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-17 Charges. (a) All charges for the use of authority's services shall be as provided in Exhibits A through C located at the end of this chapter, which are made a part of this section, except that the executive director is authorized to and may assess reasonable interim charges for new equipment or services that do not appear on existing rate schedules.

<u>Exhibit</u>	<u>Type</u>	<u>Date</u>
A	Personnel	April 1989
B	Facilities and Equipment	April 1989
C	Services	April 1989

(b) For commercial business customers, the prevailing rate in the business community shall apply.

(c) The rate schedule shall remain in effect and on file in the general manager's office until revised by the authority pursuant to chapter 91, HRS.

(d) A copy of the rate schedule for services may be obtained from the authority during the hours of 7:45 a.m. to 4:30 p.m., Monday to Friday, inclusive.

(e) Rental rates are the same as listed under miscellaneous services except that a personnel handling charge will be added to cover set-up and strike times.

(f) Charges shall apply whenever the authority provides or stands ready to provide requested services, except that the executive director may waive charges when the productive use of services is prevented by weather or other circumstances beyond the customer's reasonable anticipation. No charges shall be made for specific items of equipment which fail during use. [Eff 7/2/81; am 11/5/83; am and comp 6/17/89] (Auth: HRS §§314-8, 80-1) (Imp: HRS §314-8)

§16-63-18 Discounts. If the board deems it in the public interest, discounts of rates for services may be offered. [Eff 7/2/81; comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-19 Payment. (a) The customer shall receive an invoice or invoices from the authority for all services provided. Payment is due within thirty days of receipt of invoice, unless otherwise mutually agreed to by the customer and the authority.

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(b) Amounts unpaid after thirty days are considered past due and a finance charge of one per cent per month will be charged on the unpaid amounts.

(c) The customer shall pay any collection or attorney's fees associated with collecting unpaid invoices more than ninety days past due.

(d) All work which is to be billed to a third party shall be accepted by the authority only with prior written authorization from the third party. Terms and conditions of payment stated above shall also apply to the third party.

(e) Claims for adjustment in billing must be presented to the authority in writing within thirty days from the date of the invoice in question. The customer shall waive any claim for adjustment in billing which is not presented within this period. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-20 Scheduling. The authority shall have the exclusive right to schedule services for customers. Customers shall give the authority such advance notice of specific services needed as the authority may require. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-21 Use restrictions. The services to be used or contracted by a customer shall not be for any other purpose except for uses mutually agreed upon. [Eff 7/2/81; comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-22 Care of equipment. A description or identification marker attached to any equipment of the authority while in the possession or control of the customer shall not be damaged, defaced, or removed. The customer shall exercise care in the use and operation of all authority equipment. The customer shall be liable for the cost of repair or replacement of equipment lost, damaged, or destroyed as a result of the customer's negligence. The customer, upon expiration of the scheduled use of equipment, shall return the equipment to the authority. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-23 Indemnity. The customer shall indemnify, hold harmless and defend the authority, the board, its duly designated representatives, agents, and employees from any and all claims of liability whether by the customer or third parties, including but not limited to libel, slander, defamation, illegal competition of trade products, and infringement of patent, copyrights, or other proprietary

rights which may result from services provided by the authority. At the discretion of the authority, the customer shall be required to sign an indemnity agreement whereby the customer agrees to indemnify, hold harmless, and defend the authority, the board, its duly designated representatives, agents, and employees against any and all aforementioned claims of liability. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-24 Talent. At the discretion of the authority, all talent or their agents, whether under formal contract or not, employed in the production of programs, shall be required to sign an indemnity agreement that fulfills the requirements of section 16-63-23. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-25 Elements. The customer must secure the authority's prior approval for use of any element in connection with the authority's services. The customer shall reimburse the authority for all expenses incurred by it in connection with the handling and care of such element. The customer must provide the agency with prior written permission from the owner or owners of any element to be used by the authority. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-26 Responsibility for materials. The customer shall at all times be responsible and liable for all elements supplied by the customer for use in connection with authority's services. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-27 Storage. The authority may store without charge elements and materials used during the time that production and transmission services are in progress and for thirty days thereafter. Within fifteen days after receiving a written notice from the authority requesting removal of elements and materials, the customer shall remove at the customer's expense, all elements and materials in storage. In the event the customer fails to remove the elements and materials, the authority shall have the right to dispose of such elements and materials without liability to the customer or any person. The customer shall hold the authority harmless from all damages or actions arising from the destruction or disposition of the elements and materials. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-28 Ownership of programs. All programs produced by the authority utilizing authority funds exclusively are the property of the authority. All programs produced for a customer utilizing customer's funds exclusively are the property of the customer. An agreement defining ownership rights shall be entered into prior to the cooperative production of programs utilizing both authority and customer funds. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-29 Usage. The authority's programs may be registered or copyrighted. Authority programs may be rented, leased, or sold to persons by the authority or its officially designated agent or, with prior written approval, used free of charge or in exchange for programs and services. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

§16-63-30 Income. All funds received from the rental, leases, or sales of the authority's programs shall be deposited into the public broadcasting revolving fund and used for the purpose of supporting the authority's services and operations. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-13) (Imp: HRS §§314-13)

§16-63-31 Access. No person without the prior written consent of the program owner shall utilize or view any program located or temporarily placed at the authority's premises. [Eff 7/2/81; am and comp 6/17/89] (Auth: HRS §314-8) (Imp: HRS §314-8)

Amendments to and compilation of chapter 16-63, Hawaii Administrative Rules, on the Summary Page dated March 29, 1989, were adopted on March 29, 1989, following a public hearing held on the same date, after public notices were given in the Hawaii Tribune-Herald, the Maui News, the Garden Island News, the Honolulu Star-Bulletin and Advertiser on March 5, 1989.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Willard Welsh

WILLARD WELSH, Chairman
Hawaii Public Broadcasting Authority

APPROVED AS TO FORM: Date 5/25/89

/s/ Michael L. Meaney

Deputy Attorney General

APPROVED: Date 5/30/89

/s/ Robert A. Alm

ROBERT A. ALM

Director of Commerce and Consumer Affairs

APPROVED: Date 6/7/89

/s/ John Waihee

JOHN WAIHEE

Governor
State of Hawaii

June 7, 1989

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-63
Hawaii Administrative Rules
March 29, 1989

SUMMARY

1. §§16-63-1 to 16-63-6 are amended.
2. §§16-63-8 to 16-63-17 are amended.
3. §§16-63-19 and 16-63-20 are amended.
4. §§16-63-22 to 16-63-31 are amended.
5. Chapter 63 is compiled.